



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

ORIGINAL
(Red)

OCT 17 2003

James T. Redd, President
Xynatech of New Mexico
545 Vortex Road
Rio Rancho, NM 87124



SDMS DocID 2024831

Re: Malvern TCE Superfund Site, Malvern, Chester County, Pennsylvania
Request for Information

Dear Mr. Redd:

The purpose of this letter is to obtain certain information from you in connection with the Malvern TCE Superfund Site ("Site" or "Malvern").

The U.S. Environmental Protection Agency (EPA) is currently investigating the source, extent and nature of the release or threatened release of hazardous substances, pollutants or contaminants into the environment at the Malvern TCE Superfund Site, Chester County, Pennsylvania. The investigation involves, among other things, an inquiry into the past and present ownership of the Site and operators of the Site. EPA is additionally seeking to obtain information concerning the generation, storage, treatment, transportation, and disposal methods of such substances that have been or threatened to be released from the Site. EPA believes that you might possess information which may assist the Agency in its investigation of the Site.

In order to complete an investigation, EPA requires that you respond fully and completely to the following items within **thirty (30) calendar days** from your receipt of this letter.

INSTRUCTIONS

1. If asserting a business confidentiality claim on information submitted in response to this request, please clearly mark such information by either stamping or using any other such form of notice that such information is trade secret, proprietary, or company confidential.
2. Please provide a separate narrative response to each question and subpart of a question set forth in this information request. Note that the terms "you" and "respondent" mean the addressee's officers, managers, employees, contractors, trustees, partners, successor's, assigns, and agents.



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3. Precede each response with the number and/or letter of the question to which it corresponds.
4. For each question contained herein, identify all persons consulted in the preparation of the answer. Also provide their name, titles, areas of responsibility, current addresses, and telephone numbers.
5. For each question contained herein, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question and provide true and accurate copies of all such documents.
6. For each document produced in response to this information request, indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
7. For each question contained herein, if information or documents responsive to this information request are not in your possession, custody or control, state that fact and provide the names, titles, areas of responsibility, addresses, and telephone numbers of the persons from whom such information or documents can be obtained.

QUESTIONS

EPA has obtained information through the course of its investigation which indicates that Xynatech Inc. may have produced wastes that were sent to the Site. EPA has reviewed a letter submitted by your counsel, dated May 7, 2003 and April 1, 2003, and has determined that additional information is required. In order to complete its investigation, EPA requires that you respond to the following questions.

1. Provide the names of all corporate officers and directors of Xynatech, Inc. and Xynatech of New Mexico from the time of incorporation to present. Please be sure to identify the name of the office to his/her title.
2. Provide the names of all major shareholders of Xynatech, Inc. and Xynatech of New Mexico from the time of incorporation to present.
3. Did Xynatech of New Mexico purchase, acquire or otherwise obtain any assets (tangible or intangibles) of Xynatech, Inc.? If so please provide the following:
 - a) a complete list, including a description of each asset purchased, acquired, transferred or otherwise obtained;

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- b) the amount of consideration exchanged for each such asset purchased, acquired, transferred or otherwise obtained; and
 - c) any document that evidences such assets were purchased, acquired, transferred or otherwise obtained (i.e. asset sale purchase agreements, bulk sale agreements, etc.);
 - d) all appraisals for the assets that were purchased, acquired, transferred or otherwise obtained.
4. Did Xynatech of New Mexico ever employ any former or current employee of Xynatech Inc. If so, please provide the following information:
- a) the name, last known address, and title each such employee held for both companies;
 - b) did employee benefits transfer with such employees?;
 - c) was the pension fund transferred to Xynatech of New Mexico?; and
 - d) did employee's seniority and years of service transfer to Xynatech of New Mexico?
5. Were customers of Xynatech Inc. the same or similar customers of Xynatech of New Mexico? Please identify all such customers.
6. Did Xynatech of New Mexico agree to a covenant not to compete with Xynatech, Inc?
7. Has Xynatech of New Mexico utilized any of the same services that Xynatech Inc. did?
- accountants (please identify)
 - banking institutions (please identify)
 - legal representatives (please identify)
 - consultants (please identify)
7. Did Xynatech of New Mexico assume any debts or other liabilities of Xynatech, Inc. If yes, please identify all such assumptions of debts or other liabilities.
8. Please provide any other information you believe is relevant regarding the relationship between Xynatech of New Mexico and Xynatech, Inc.

Authority to require submission of this type of information has been given to EPA by Congress under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. Section 9604(e). EPA requires that you respond in writing, to the address specified below, within **thirty (30) calendar days** of your receipt of this letter.

Section 104 of CERCLA, 43 U.S.C. Section 9604, authorizes EPA to pursue penalties for failure to comply with that section or failure to respond adequately to required submissions of information. In addition, providing false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. Section 1001. The information you provide may be used by EPA in administrative, civil, or criminal proceedings.

You are entitled to assert a claim of business confidentiality covering all or any part of the submitted information, in the manner described in 40 C.F.R. Section 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If a claim of business confidentiality is not asserted at the time the required information is submitted to EPA, EPA may make this information available to the public without notice to you. Further, if for any reason you do not provide all information responsive to this letter, in your answer to EPA you must: (1) describe specifically what was not provided, (2) supply to EPA a clear identification of the document(s) not provided, and (3) provide to EPA an appropriate reason why the document(s) was not provided.

EPA may contract with one or more independent contracting firms (see attached list of EPA contractors and cooperative agreement grantees) to review the documentation, including documents which you claim are confidential business information ("CBI"), which you submit in response to this information request, depending on available agency resources. Additionally, EPA may provide access to this information to (an) individual(s) working under (a) cooperative agreement(s) under the Senior Environmental Employment Program (SEE Enrollees). The SEE program was authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98-313). The contractor(s) and/or SEE Enrollee(s) will be filing, organizing, analyzing and or summarizing the information for agency personnel. The contractors have signed a contract with EPA that contains a confidentiality clause with respect to CBI that they handle for EPA. The SEE Enrollee(s) is working under a cooperative agreement that contains a provision concerning the treatment and safeguarding of CBI. The individual SEE enrollee has also signed a confidentiality agreement regarding treatment of CBI. Pursuant to CERCLA, 42 U.S.C. § 9604(e)(7) and EPA's regulations at 40 C.F.R. § 2.310(h), EPA may share such CBI with EPA's authorized representatives which include contractors and cooperators under the Environmental Programs Assistance Act of 1984. (See 58 Fed.Reg. 7187 (1993)). If you have any objection to disclosure by EPA of documents which you claim are CBI to any or all of the entities listed in the attachment, you must notify EPA in writing at the time you submit such documents.

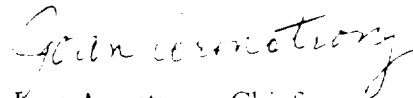
This required submission of information is not subject to the approval requirements under the Paperwork Reduction Act of 1980, 44 U.S. C. Section 3501 et seq.

We appreciate and look forward to your prompt response to this letter. All documents and information should be sent to:

Patrick J. Egan (3HS11)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

If you have any questions, please contact Mr. Egan at (215) 814-3167. Legal Questions should be directed to Joan A. Johnson, Senior Assistant Regional Counsel at (215) 814-2619.

Sincerely,



Joan Armstrong, Chief
PRP Investigation and Site
Information Section

cc: Patrick J. Egan (3HS11)
Joan A. Johnson (3RC41)
Dave Crownover (PADEP)
Bruce Thall, Esquire



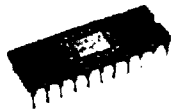
Cornelius Carr
09/26/2003 08:07 AM

To: Patrick Egan/R3/USEPA/US@EPA
cc: Laura Janson/R3/USEPA/US@EPA, Hank
Sokolowski/R3/USEPA/US@EPA, R3 HSCDENF@EPA
Subject: Re: Enforcement Notification - 104(e) Letter to Xynatech of New Mexico

Here's Tom Voltaggio's OK on your upcoming 104(e) Letter to Xynatech.

Connie, 9/26/03

----- Forwarded by Cornelius Carr/R3/USEPA/US on 09/26/2003 08:05 AM -----



Tom Voltaggio
09/25/2003 04:31 PM

To: Cornelius Carr/R3/USEPA/US@EPA
cc: Donald Welsh/R3/USEPA/US@EPA, Gail Tindal/R3/USEPA/US@EPA,
Michael DAndrea/R3/USEPA/US@EPA, R3 HSCDENF@EPA, Rich
Kampf/R3/USEPA/US@EPA, Samantha
Fairchild/R3/USEPA/US@EPA, Thomas Damm/R3/USEPA/US@EPA,
William Early/R3/USEPA/US@EPA
Subject: Re: Enforcement Notification - 104(e) Letter to Xynatech of New Mexico



OK

Tom Voltaggio
Deputy Regional Administrator
Middle Atlantic Regional Office
US Environmental Protection Agency

Cornelius Carr



Cornelius Carr
09/25/2003 12:33 PM

To: Samantha Fairchild/R3/USEPA/US@EPA, Tom
Voltaggio/R3/USEPA/US@EPA, William Early/R3/USEPA/US@EPA,
Thomas Damm/R3/USEPA/US@EPA, Donald
Welsh/R3/USEPA/US@EPA, Gail Tindal/R3/USEPA/US@EPA, Rich
Kampf/R3/USEPA/US@EPA, R3 HSCDENF@EPA
cc: Michael DAndrea/R3/USEPA/US@EPA
Subject: Enforcement Notification - 104(e) Letter to Xynatech of New Mexico

Here's an upcoming 104(e) letter going to a company in New Mexico, with regard to the Malvern TCE site.
If you approve, let me know and I'll inform the Program. Connie, 9/25/03

----- Forwarded by Cornelius Carr/R3/USEPA/US on 09/25/2003 12:32 PM -----



Patrick Egan
09/25/2003 10:13 AM

To: Abe Ferdas/R3/USEPA/US@EPA, Cornelius
Carr/R3/USEPA/US@EPA
cc: Hank Sokolowski/R3/USEPA/US@EPA, Joan
Armstrong/R3/USEPA/US@EPA, Joan-A
Johnson/R3/USEPA/US@EPA, Heather Gray
Torres/R3/USEPA/US@EPA
Subject: Enforcement Notification - 104(e) Letter to Xynatech of New Mexico

Enforcement Notification

Name of the Facility: Malvern TCE Superfund Site

County, State: Chester County, Pennsylvania

Statute, Section: CERCLA § 104(e) to Xynatech Inc. of New Mexico

EPA is currently pursuing a Third Round DeMinimis Settlement with 54 Potentially Responsible Parties. Xynatech Inc. of New Mexico may be a successor to a de minimis party. This 104e letter asks questions regarding the possible successorship between the two companies.

Patrick J. Egan, Investigator
PRP Investigation and Site Information Section
U.S. EPA
1650 Arch Street - 3HS11
Philadelphia, PA 19103
(215) 814-3167 (voice)
(215) 814-3005 (fax)